

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ROBERT L. DELK,)	
)	
Plaintiff,)	No. 3:13-0758
)	Judge Campbell
V.)	Magistrate Judge Knowles
)	
SUPERIOR OFFICE SERVICES, INC.,)	JURY DEMAND
)	
Defendant.)	

**PLAINTIFF’S STIPULATION OF DISMISSAL OF 42 U.S.C. § 12101 AMERICANS
WITH DISABILITIES ACT CLAIM AND ADDITIONAL SUGGESTION OF LACK OF
SUBJECT MATTER JURISDICTION**

The parties having determined that defendant was not a covered employer under the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*, (“ADA”) during the relevant periods involved in this case, plaintiff moves the Court pursuant to Fed. R. Civ. P. 41(a)(2) for an Order dismissing his 42 U.S.C. § 12101/ADA claim should be dismissed.

Additionally, as the sole basis for subject matter jurisdiction in this case pursuant to 28 U.S.C. § 1331 is plaintiff’s claim arising under 42 U.S.C. § 12101 (with plaintiff’s remaining claims arising under Tennessee state law), it appears that the Court lacks original subject matter jurisdiction and that plaintiff’s claims should be determined in the state courts of Tennessee. As a result, while plaintiff does not consent to a voluntary dismissal of this case pursuant to Fed. R. Civ. P. 41(a) because of the effect that such voluntary dismissal might have on any subsequent state court litigation, plaintiff suggests that an involuntary dismissal of this action without prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 41(b) is appropriate.

/s/ Stephen W. Grace

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Stipulation and Suggestion of Lack of Subject Matter Jurisdiction was filed electronically using the Court's CM/ECF system upon all counsel of record, including Donald E. Hayes, Jr., Esq. and O. John Norris, III, Esq., Jackson Lewis, LLP, 999 Shady Grove Rd., Suite 110, Memphis, TN 38120, this 1st day of July, 2014.

s/Stephen W. Grace